Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Modernization of Media Regulation Initiative	)	**MB Docket No. 17-105**
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	)	
Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees	)	**MB Docket No. 14-127**
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	)	
Cable Television Technical and Operational Requirements	)	**MB Docket No. 12-217**
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	)	
Revisions to Cable Television Rate Regulations	)	**MB Docket No. 02-144**
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REPLY COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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REPLY COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its reply to comments filed in response to the Federal Communications Commission's Public Notice initiating a review of its rules applicable to media entities, with the aim of reducing unnecessary regulations and undue regulatory burdens.[1]

I. INTRODUCTION AND SUMMARY

ITTA's members provide a variety of communications services to subscribers in predominantly rural areas in 43 states. In addition to voice and high-speed data offerings, ITTA members provide video service to subscribers utilizing a variety of distribution platforms, including IPTV networks, coaxial cable systems, fiber infrastructure, and hybrid fiber-coaxial

[1] *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (*Public Notice*).

cable. In the vast majority of these markets, ITTA members are new entrant multichannel video programming distributors (MVPDs) that compete head-to-head against DBS providers, at least one (and in some cases, two or three) incumbent cable operators, and online video providers, such as Netflix, Hulu, Amazon Video, Apple TV, and others.

ITTA appreciates the Commission's initiative to reexamine its media regulations with the objective of eliminating or modifying regulations that are outdated, unnecessary, and/or unduly burdensome.[2] Such regulations inhibit competition and new market entry by saddling new entrants with unnecessary burdens that hinder or delay their ability to launch video service, and then forcing them to continue to divert scarce resources towards fulfilling needless regulatory requirements rather than promoting a competitive service. In the end, it is consumers who bear the brunt of such regulations, through the lost opportunity of a compelling competitor, delayed entry of a competitor, or the entrant recouping compliance costs from consumers.

The comments in response to the *Public Notice* contain several proposals that, if ultimately implemented, will help to ameliorate these harms. Both the public inspection file rules and the Form 325 reporting requirement have not been holistically reviewed since 1999. ITTA supports those comments advocating elimination of public inspection file requirements or, at a minimum, significant curtailment of them. ITTA also agrees that it is time to decommission the Form 325. Furthermore, ITTA concurs that the Commission should repeal certain rules related to cable technical standards and proof-of-performance testing, and, at a minimum, refrain from applying them to digital signals. Finally, the Commission should remove from the CFR long defunct rate regulation rules.

[2] *See id.*

II. DISCUSSION

A. The Commission Should Eliminate, or at Least Significantly Reduce, the Public Inspection Requirements for Cable Systems

The rules requiring cable operators to maintain a public inspection file and dictating its contents achieve the dubious trifecta of being outdated, unnecessary, and unduly burdensome. The public inspection file rule has existed since the early 1970s, and has not been holistically reviewed since 1999. As described by Verizon, today, rather than needing to travel to a cable operator's office to review key information on the operator, consumers can obtain such information from cable operators' websites and other sources with more extensive and useful material about MVPD products and services than the public inspection file.[3]

ITTA recognizes that recent Commission efforts moving the public file to an online database hosted by the Commission were intended to ease the burdens of maintaining it.[4] However, even in its current online format, it is simply not a resource that consumers utilize.[5] As Verizon maintains, the public inspection file rule no longer promotes "greater interaction between the Commission, the public, and the cable industry" as it was originally intended to, and in the Internet age, it simply has outlived its usefulness.[6] In light of this, ITTA supports Verizon's call to eliminate the rule.[7]

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[3] *See* Verizon Comments at 6.

[4] *See, e.g., Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526, 527, para. 1 (2016) (*Online Public File Expansion Order*).

[5] Verizon asserts that its public file has received about five visits per year since it introduced FIOS video service in 2005. *See* Verizon Comments at 7. Similarly, an employee of one ITTA member states: "In my entire career in [this] industry, I do not recall a single occasion when a member of the public requested information from the public files."

[6] *See id.* at 6-7.

[7] *See id.* at 7.

ITTA also agrees that, if the Commission does not eliminate the cable public inspection file rule altogether, it should at least reduce its required contents.[8]

1. Current Channel Lineup[9]

The Commission should eliminate the requirement to include channel lineups in the public inspection file.[10] As NTCA describes, consumers seeking current channel lineup information can consult myriad sources, including on-screen electronic programming guides, guide channels, cable operator and third-party websites and apps, and paper lineups provided by cable operators.[11] Tracking the decades-old history of the requirement, ACA also convincingly demonstrates that it is now redundant and unnecessary.[12] In this regard, the Commission should not merely eliminate the requirement to include this information in the public inspection file. Rather, ITTA further agrees with ACA that the underlying requirement in Section 76.1705 for the cable operator to maintain such a listing at its local office is likewise unnecessary, since cable operators have such information on hand in the regular course of business. The Commission should remove the requirement "in the interest of clearing the regulatory underbrush."[13]

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[8] *See id.* at 8.

[9] 47 CFR § 76.1700(a)(4) ("The operator of each cable television system shall maintain a current listing of the cable television channels which that system delivers to its subscribers in accordance with § 76.1705"); *see also* 47 CFR § 76.1705.

[10] *See* NCTA Comments at 27; Verizon Comments at 8.

[11] *See* NCTA Comments at 27; *see also* ACA Comments at 15.

[12] *See* ACA Comments at 14-15.

[13] *Id.* at 15.

2. Categories of Information that Are of Little or No Use to Consumers

There are several categories of information "that are of no use or interest to consumers."[14]

A prime example is the requirement that cable system public inspection files include a list of must-carry broadcast stations.[15] Among the information cable operators need to maintain in their public inspection file for must-carry noncommercial educational broadcast stations is whether the station was carried by the system on March 29, 1990.[16] Putting aside that most of ITTA members' video service offerings commenced in the 21st century, as ACA aptly states, "cable subscribers have no need to know, and are unlikely to care, whether a noncommercial educational broadcast station was carried over 27 years ago."[17] ITTA concurs with NCTA's general assessment, with respect to including a list of must-carry stations in the public inspection file, that "[t]here is no reason to believe that members of the public would find this information of any utility."[18] With no discernible reason for retaining this requirement, the burdens of maintaining the subject information in the public inspection file inherently outweigh the benefits.

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[14] Verizon Comments at 8.

[15] 47 CFR § 76.1700(a)(6) ("The operator of every cable television system shall maintain a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements in accordance with § 76.1709"); *see also* 47 CFR § 76.1709.

[16] 47 CFR § 76.1709(a).

[17] ACA Comments at 16.

[18] NCTA Comments at 27. ITTA acknowledges that the Communications Act of 1934, as amended (Act), requires cable operators to identify must-carry stations "upon request." 47 U.S.C. §§ 534(b)(8), 535(k). As ACA recounts, in implementing these statutory provisions enacted in the 1992 Cable Act, the Commission gave no explanation for why the detailed information set forth in Section 76.1709 had to be affirmatively included in cable operators' public inspection files. *See* ACA Comments at 16. One-quarter of a century after enactment of the must-carry mechanism, whatever purpose requiring the listing of such stations in the public inspection file may have been intended to serve, ITTA cannot conjure any reason it would still be necessary.

There are several additional categories of information that have outlived whatever utility they may once have had as required inputs in the cable public inspection file.[19] They are:

- *Policies Regarding Indecent Leased Programming*. Section 76.701 of the Commission's rules provides that a cable operator *may* adopt and enforce prospectively a written and published policy of prohibiting indecent leased access programming. Section 76.1707, in turn, provides: "If a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to § 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file."[20] What was likely a convenience bestowed upon cable operators by the Commission when it adopted Section 76.1707 nearly two decades ago somehow, without explanation, became a requirement when the Commission modified the public inspection file rules in 2016.[21] Cable operators are capable of "publishing" such policies on their websites or making them available to interested parties upon request. There therefore is no reason why they should be required to be included in the online public inspection file.
- *Sponsorship Identification*. Section 76.1715 provides that whenever sponsorship announcements are omitted pursuant to Section 76.1615(f), the cable operator

[19] In the highly unlikely event consumers seek this information, there are other ways they may access it, including upon reasonable notice to the system operator.

[20] 47 CFR §§ 76.701, 76.1707.

[21] *See Online Public File Expansion Order*, 31 FCC Rcd at 578, Appx. B, Final Rules (adopting 47 CFR § 76.1700(a)(5) to read: "If a cable operator adopts and enforces written policy regarding indecent leased access programming, such a policy shall be published in accordance with § 76.1707").

shall maintain a list of each sponsor, and make it available to members of the public "who have a legitimate interest in obtaining the information contained in the list."[22] Paradoxically, Section 76.1700(a)(8) requires the operator to place this list in the public inspection file.[23] This requirement undermines the "legitimate interest" qualification of Section 76.1715, and should be eliminated.

- *Requests for Waiver of Basic Tier Scrambling Prohibitions*. Section 76.1700(a)(9) reiterates the general prohibition in Section 76.630 against cable operators scrambling or otherwise encrypting signals carried on the basic service tier, and then provides that copies of requests for waiver of this prohibition "must be available in the public inspection file in accordance with § 76.630."[24] Section 76.630(a)(2) requires cable operators who request such waivers to notify subscribers by mail of waiver requests,[25] and it also prescribes the contents of such notice. Previously, Section 76.630 required the notice to state: "A copy of the request for waiver shall be available for public inspection at (the address of the cable operator's local place of business)."[26] Without explanation, the *Online*

[22] 47 CFR § 76.1715; *see* 47 CFR § 76.1615.

[23] *See* 47 CFR § 76.1700(a)(8).

[24] 47 CFR § 76.1700(a)(9); *see* 47 CFR § 76.630.

[25] Consistent with the Commission's recent decision to allow cable operators to provide annual notifications required by Section 76.1602(b), 47 CFR § 76.1602(b) to their subscribers via email, the Commission also should permit operators to provide the notification required by Section 76.630(a)(2) by email, as well as by other electronic means. *See National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269 (2017); *id.* at 5279, Statement of Commissioner Michael O'Rielly ("It is my hope that the Commission will be able to keep things moving in this direction. For example, the principle underlying this item could potentially be extended to allow for distribution to a customer's online account instead of via email, if helpful.").

[26] 47 CFR § 76.630(a)(2) (2015).

Public File Expansion Order changed this wording to state: "A copy of the request for waiver shall be available for public inspection at *www.fcc.gov*."[27] While presumably the intent in that context was to direct interested parties to the online public inspection file, they may just as easily search the Commission's Electronic Comment Filing System once at the Commission's website. In addition, subscribers at the time of filing of the waiver request would already have had the notice sent to them directly. In the light of the alternative ways interested parties can access such waiver requests, as well as the absence of any discernible reason why such waiver requests must be included in the online public inspection file, the requirement to post them there is unnecessary and should be repealed.

B. The Commission Should Eliminate the Annual Form 325 Reporting

Form 325, the cable television system report, dates back over 50 years, and was last holistically reviewed in 1999.[28] The form requires cable operators, on a system-by-system basis, to report information that is otherwise publicly available or otherwise provided to the Commission via other required filings.[29] Moreover, the form was designed to collect information on traditional monopoly cable systems, and the information collected does not fit competitive video providers.[30] The Media Bureau even recently called its utility into question.[31] With the combined infirmities of the form being redundant, "not serv[ing] any clear or legitimate

[27] *Online Public File Expansion Order*, 31 FCC Rcd at 577, Appx. B.

[28] *See* NCTA Comments at 29; Verizon Comments at 17; *see also* 47 CFR § 76.403 (requiring annual filing of the report by cable operators with 20,000 or more subscribers).

[29] *See* ACA Comments at 27.

[30] *See* Verizon Comments at 17.

[31] *See, e.g., Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, Report, 31 FCC Rcd 5463, 5479, para. 34 (MB 2016). ITTA also notes that the form was not used for several years in the 1990s.

purpose,"[32] and involving many hours to complete, ITTA agrees that it is time to abandon it once and for all.[33]

C. The Commission Should Refrain from Expanding – if Not Eliminate – Certain Rules Related to its Cable Technical Standards and Proof-of-Performance Testing

As recounted by ACA, in 1990, the Commission issued a report to Congress finding that there were numerous technical problems with cable service at that time.[34] Two years later, in an effort to address those problems, the Commission adopted technical standards and a proof-of-performance testing regime.[35] While these measures were useful and appropriate in the cable industry's relatively early days – an era when cable providers were monopoly MVPDs offering analog-only service – due to the evolution of services and competition in the ensuing decades these requirements have now outlived their usefulness. The Commission should eliminate or, at a minimum, modify these requirements with respect to analog cable signals. The Commission also should confirm that they will not be applied to digital signals.

1. Signal Quality, Signal Leakage, and Proof-of-Performance Tests

The technical standards currently apply to cable operators' provision of analog channels, and operators are required to conduct extensive proof-of-performance testing semi-annually to demonstrate compliance with these standards. Vibrant MVPD competition, however, renders

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[32] NCTA Comments at 30.

[33] ITTA also supports ACA's contention that, if the Commission nevertheless retains Form 325, it should no longer send the form to a random sampling of cable systems with less than 20,000 subscribers, as the undue burdens of completing it are magnified for them. *See* ACA Comments at 27.

[34] *See* ACA Comments at 3 (citing *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, Report, 5 FCC Rcd 4962 (1990)).

[35] *See id.* at 3-4.

these requirements unnecessary,[36] and the Commission certainly should not expand them to digital systems. As Verizon asserts:

> The ubiquitous competition that Verizon faces as a competitive entrant in the video marketplace is the best mechanism to ensure high signal quality, and there is no evidence that regulation would improve the consumer experience. Competitive pressure creates strong incentives for new and incumbent providers to maintain the highest quality services . . . . Providers also face additional business incentives to maintain quality, such as contractual obligations to content providers.[37]

Not only are proof-of-performance testing requirements unnecessary, they are also extremely burdensome, necessitating operators to expend thousands of hours.[38] The Commission should eliminate them.

The Commission should also consider measures to ease the annual signal leakage testing and reporting requirements of cable operators.[39] ITTA's members certainly recognize the importance to public safety of avoiding signal leakage. However, networks using extensive amounts of fiber pose little to no threat of harmful interference, and the Commission could

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[36] *See id.* at 4-5; NCTA Comments at 24-25.

[37] Verizon Comments at 11-12. *See also* NCTA Comments at 24: "Nationwide MVPD competition provides a strong incentive to detect and correct any technical problems as soon as possible – and certainly not to wait until the next proof-of-performance test. Operators, independently of any regulatory requirement, have implemented methods to monitor system performance and conduct routine system maintenance."

[38] *See* NCTA Comments at 24; *see also* ACA Comments at 5. As ACA describes, the design of the testing regime per Section 76.601(b), 47 CFR § 76.601(b) – entailing testing at "widely separated points" within the system, "balanced to represent all geographic areas" served by the system – disproportionately burdens smaller operators serving large rural areas. *See* ACA Comments at 6. Therefore, ITTA concurs with ACA that in the absence of eliminating these requirements, the Commission should at least modify them to minimize the burdens on smaller systems. *See id.*

[39] *See* NCTA Comments at 25.

provide some relief for such systems.[40] At a minimum, the Commission should clarify that all-fiber networks are not subject to signal leakage testing requirements.

2. Proof-of-Performance Recordkeeping Requirements

ITTA agrees with ACA that, even if the Commission retains proof-of-performance testing requirements, it should eliminate, or at least significantly modify, the associated recordkeeping requirements. As ACA demonstrates, the five-year retention period far exceeds that applicable to other records operators must retain.[41] This onerous requirement is also duplicative, as Section 76.1717 obligates operators to demonstrate compliance with the technical standards upon request by the Commission or local franchising authority (LFA).[42] In light of such redundancy and excessive burdensomeness, the Commission should repeal it.

3. Technical Standards Should be Voluntary

ITTA supports ACA's call for a reexamination of the need for required technical and signal quality standards.[43] While uniform standards served a valuable purpose a quarter-century ago, requirements are no longer necessary, as most systems have transitioned away from analog technology, and those analog systems that remain already employ uniform standards.[44] Moreover, the competitive marketplace also has evolved to a point of rendering such requirements unnecessary.[45] As ACA demonstrates, the Commission could satisfy the mandates

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[40] *See id.*; Verizon Comments at 12.

[41] *See* ACA Comments at 7; 47 CFR § 76.1704.

[42] *See* 47 CFR § 76.1717; ACA Comments at 8.

[43] *See* ACA Comments at 8-10.

[44] *See id.* at 9.

[45] *See supra* pp. 9-10.

of Section 624(e) of the Act by retaining minimum technical standards as voluntary.[46] Required technical standards also should not be imposed upon digital signals.[47]

4. The Commission Should Conclude Its Pending Technical Standards Rulemaking Proceeding

ITTA joins the chorus of commenters who urge the Commission to take action in its open proceeding on cable technical standards.[48] In doing so, the Commission can address all of the suggestions discussed above for eliminating or modifying its rules related to cable technical standards and testing. In the current competitive MVPD marketplace, and with the technical characteristics of fiber-based systems, applying these standards and testing requirements to digital signals is unnecessary and would significantly burden MVPDs with no countervailing benefit. The Commission should refrain from doing so.[49]

D. The Commission Should Remove Expired Cable Rate Regulations

Under Section 623(c)(4) of the Act,[50] the Commission's authority to regulate the rates of cable programming "upper tiers" sunset after March 31, 1999. Yet, vestiges of the Commission's prior authority are still lodged in the CFR. Again in the realm of eliminating regulatory underbrush, the Commission should remove these rules from the books.

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[46] 47 U.S.C. § 544(e); *see* ACA Comments at 9-10. If the Commission does make these standards voluntary, it should eliminate Section 76.1717, which requires operators to demonstrate compliance with technical standards upon request of the Commission or LFA.

[47] *See* NCTA Comments at 25.

[48] *See Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, 27 FCC Rcd 9678 (2012); *see also* NCTA Comments at 25; Verizon Comments at 13; ACA Comments at 8 n.35.

[49] The Commission also should decline to conjure new testing requirements specifically for digital systems. *See* Verizon Comments at 13.

[50] 47 U.S.C. § 543(c)(4).

NCTA, for instance, specifies that 47 CFR §§ 76.980, 76.984, 76.986, and 76.987 are due for removal.[51] In addition, a search of the Commission's website for 47 CFR § 76.982, addressing the continuation of rate agreements executed before July 1, 1990, yields five results, the most recent from 2003. Between that fact and the subject agreements now being over 27 years old, it is hard to imagine this rule needs to continue to occupy space in the CFR. ITTA further observes that 47 CFR § 76.922 encumbers over 14 pages of the CFR, and includes rules keyed to dates in 1994; some of these provisions clearly are no longer relevant. ITTA urges the Commission to look closely at these rules and others in Part 76, Subpart N with the goal of completing a long overdue clean-up.

III. CONCLUSION

Many rules, such as those dealing with the cable public inspection file, reporting, and technical standards and testing, have long outlived their usefulness, and should be eliminated or significantly curtailed insofar as the burdens they impose upon cable operators far exceed any purported public interest benefits. Others, such as several governing cable rate regulation, are rotting on the vine and simply need to be plucked from the CFR. The Commission has afforded

[51] *See* NCTA Comments at 23 n.72.

itself a real opportunity to reduce the daunting heft of the CFR volume encompassing Parts 70-79. The Commission should seize it. Doing so will reduce unnecessary regulatory obstacles "that can stand in the way of competition and innovation in media markets."[52]

Respectfully submitted,

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[52] *Public Notice*, 32 FCC Rcd at 4406.